IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6711 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVAN GANPATI

Versus

P K MENON OR HIS SUCCESSOR IN OFFICE

Appearance:

1. Special Civil Application No. 6711 of 1989

MR IS SUPEHIA for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR UI VYAS for Respondent No. 2

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/01/2002

C.A.V. JUDGEMENT

1. The petitioner who was serving as a police constable with Central Reserve Police Force (hereinafter

referred to as C.R.P.F.) has challenged his dismissal from service and prayed for quashing and setting aside the order of dismissal and to reinstate him with all consequential benefits, back wages etc.

2. The short facts of the petitioner's case are as under : The petitioner was recruited as a police constable on 2.4.69 in the C.R.P.F. and he worked as such until he came to be dismissed from service by the order dated 20.4.88 by the respondent no.1. Against the order of dismissal, the petitioner preferred an appeal before respondent no. 2 who rejected the same by the order dated 1.11.88. The petitioner has challenged the order of dismissal as confirmed by the appellate authority on the ground that on 12.4.88 a complaint was filed by the Assistant Commandant, G.C., PKE, CRPF. Gandhinagar against the present petitioner for offence punishable under Section 10(m) and 10(n) of the CRPF Act in the court of Shri Rajendra Singh, Assistant Commandant, (Second-in-command) and Judicial Magistrate, First Class, Group Centre, CRPF, Gandhinagar submitting interalia that the petitioner had remained absent without leave on 4.4.88 A.N. till 5.4.88 A.N., that he had refused to accept orders placing him under suspension w.e.f.7.4.88 and again remained absent on 11.4.88 and had not returned on duty till the time the complaint was made on 12.4.88. Accordingly, the petitioner was held guilty of offences punishable under sections 10(m) and 10(n) of the CRPF Act. It was further prayed that warrant of arrest of the petitioner may be issued immediately.

According to the petitioner, as a result of the aforesaid complaint, a so called judicial trial seems to have been held and the learned Magistrate, Assistant Commandant by his judgment dated 18.4.88 convicted the petitioner and sentenced him to undergo R.I. for 7 days upto 19.4.88. The respondent no. 1 by his order dated 20.4.88 dismissed the petitioner from service which dismissal has been confirmed by the appellate authority as stated above. According to the petitioner, as found proved, the petitioner remained absent without leave firstly from 4.4.88 A.N. to 5.4.88 A.N. and secondly from 0645 (11.4.88) to 1805 (12.4.88). Accordingly, the petitioner remained absent for 2 days. So far as the refusal to accept the suspension order is concerned, the order was accepted after sometime. However, even if these facts are taken at their face value, the penalty of dismissal is harsh, excessive and disproportionate looking to the 18 years of service of the petitioner. Therefore also, the impugned order is liable to be quashed on that ground.

According to the petitioner, the rules known as Central Reserve Police Force Rules 1955, have been framed and Rule 27 prescribes for procedure for the award of punishment. As per the said section, before dismissing the petitioner from the force, a departmental inquiry was required to be held against the petitioner and that too by the Commandant, however, in this case no formal departmental inquiry has been held against the petitioner as per Rule 27 and thus the impugned order is liable to be quashed.

According to the petitioner, it was obligatory on the part of the authorities to supply a copy of the judgment of Shri Rajendra Singh, Judicial Magistrate and Assistant Commandant by which the petitioner was convicted and sentenced. The petitioner has not been supplied a copy of the judgment. As per Rule 36 of the aforesaid rules "all trials in relation to any of the offences specified in section 9 or section 10 shall be held in accordance with the procedure laid down in the Code of Criminal Procedure, 1898". As per this Code, the petitioner-accused was entitled to a copy of the judgment free of cost without asking for it on which the respondents have relied for the purpose of dismissing him from service and hence the order of dismissal is liable to be quashed.

According to the petitioner, while imposing the penalty of dismissal from service, the respondent no. 1 had taken into consideration the "past punishments and service records" of the petitioner and he came to the conclusion that petitioner is not a fit person to be retained in service. The petitioner was not apprised of the fact that his past punishments and service records were going to be taken into consideration while deciding the quantum of penalty in this case. Therefore, without giving an opportunity of hearing in that behalf the order of dismissal is bad and liable to be quashed. The respondents also seem to have taken into consideration the adverse remarks which may have been contained in his confidential records. However, no such adverse remarks were ever conveyed to him. The petitioner did not have 10 punishments to his discredit but they were less than that and they were very minor for small lapses like not saluting, dressing etc.

According to the petitioner, it is not clear from the two orders dated 20.4.88 and 1.11.88, which orders were only given to him, whether he was tried judicially or departmentally. Though the original order speaks

about the judicial trial, the appellate order speaks of "course of inquiry" and "course of trial". It is not clear whether there was one conviction or two since the appellate order refers to two sentences one till the rising of the Court and another to 7 days R.I.

According to the petitioner, he is a semi-literate person having studied upto 9th standard. He do not know English in which language the proceedings were conducted. He requested Shri Rajendra Singh, the learned Magistrate to conduct the proceedings in Hindi. However, he did not do so. The petitioner was also not explained what was going on in the proceedings. He was told in Hindi to plead guilty and was further told that if he pleaded guilty no harm would come to his service and he would be let go with imprisonment only. On such a promise being held out the petitioner pleaded guilty. the petitioner wanted to justify his absence but he was not allowed to do so. He was also not allowed to cross-examine any witness. The petitioner was staying with his family at Gandhinagar. On 4.4.88, he was to join duty at 4 p.m. There was no kerosene in the house of the petitioner for cooking and therefore he went in search of the same. About 3 km. away he found kerosene. After waiting in a lengthy que, he got kerosene. Therefore the petitioner came late by about one hour. When he went for the duty he was told that since another man had already gone for duty in his place, he need not to go. Accordingly he remained absent on the roll call but reported in the next roll call on 5.4.88 at 7 p.m. So far as the incident of 11.4.88 is concerned, the petitioner had received a message regarding death of his brother-in-law in his native place in the State of Maharashtra. He applied for 10 days leave in order to go there which was not granted and hence he postponed the idea of going to the native place. His another brother-in-law was staying in Sabarmati area of Ahmedabad. He went there to inform him about the death. As his brother-in-law was out of house, he waited for him. It was late at night and no vehicle was available for going to Gandhinagar. He had to stay there for the night. The second day the petitioner reported in the roll call at 7 p.m. So far as the refusal of the suspension order was concerned, at that time he was in semi-conscious condition lying in the bed in the hospital. Under these circumstances, he might have refused to accept the suspension order. Thus, according to the petitioner, he had not committed any deliberate or wilful misconduct. Even if the aforesaid misconduct is taken at its face value, the maximum penalty of dismissal is not called for in the facts and circumstances of this

case.

According to Mr.Supehia, L.A. for the petitioner, discipline is required to be maintained in such force, however, looking to the circumstances of the petitioner, he has not committed any serious offences which will invite the order of dismissal from service. The alleged offences are of a minor nature and therefore the punishment of fine can be awarded. In support of his submissions, he has relied on the authority in case of The State of Mysore V/s K.Manche Gowda reported in AIR 1964 S.C. 506 and submitted that when the punishment is mainly based on the previous record of the Government Servant, second notice to Government servant must disclose this. If this is done, punishing authority can take previous record into consideration though previous record is not made subject matter of the charge at first stage.

The learned advocate for the petitioner also relied on the authority in case of Radhey Shyam Srivastava V/s Union of India and others reported in 1982 G.L.H. (U.J.) 12, authority in case of Gopal T Madnani V/s State of Gujarat and others reported in 1985 G.L.H. (N.O.C.) 12 and authority in case of Sardarsingh Devisingh V/s The District Superintendent of Police, Sabarkantha District & Ors. reported in 1985(2) G.L.R. 1368 and submitted that in that case a constable remaining absent for 150 days without obtaining leave and was dismissed from service. Rules provide several penalties, however, the competent authority is under a duty to apply its mind and decide whether the punishment is proportionate with the guilt. Ultimately this Court held on the facts of the case that punishment was too harsh.

Against the aforesaid submissions, Mr. Vyas L.A. for the respondents submitted that the authorities cited by Mr.Supehia L.A. for the petitioner has no relevance with the facts of the case in question. When the C.R.P.F.Act is very much clear regarding the punishment in case of disobedience on the part of any police officer, then lenient view as taken by this court and other courts in the facts of the case with them, is not maintained to the account and this court must confirm the punishment awarded to the petitioner to maintain the high standards of discipline in the C.R.P.F.

The affidavit-in-reply on behalf of the respondents was also filed. According to the respondents, the petitioner was detailed for quarter

guard duty on 4.4.88 evening but he did not report on Guard Mounting duty and also remained absent from Guard duty on 4.4.88 evening to 5.4.88 evening. Thereupon, the Officer-in-command of P.K.E., Group Centre, CRPF, Gandhinagar under whom the petitioner was serving has submitted a complaint about absence of the petitioner to the respondent no. 1 who is disciplinary authority. Thereupon, the respondent no. 1 had issued an order placing the petitioner under suspension w.e.f. 7.4.88. The said order was refused to be accepted by the petitioner. Accordingly, another administrative order was issued whereby the petitioner was deemed to have been placed under suspension with effect from 7.4.88. On second occasion i.e. 11.4.88 also the petitioner absented himself in Group Centre camp without permission/ sanction from the competent authority. As the petitioner did not report back for duty till after noon of 12.4.88, the officer commanding again lodged a complaint under sec. 10(m) and 10(n) of the CRPF Act in the court of Judicial Magistrate First Class and Assistant Commandant Group Centre, CRPF Gandhinagar. On 12.4.88 the petitioner was taken into judicial custody and was released on 19.4.88 on account of convicted by the Assistant Commandant by his judgment and order dated 18.4.88. It is denied that the petitioner was not supplied a copy of the judgment of the learned magistrate. As such, the petitioner has put his signature for receipt of the copy in the office copy of the record.

According to the respondents, the petitioner has admitted that charges levelled against him for which a judicial trial was conducted against him and in which he was convicted and sentenced for R.I. for 7 days upto 19.4.88 and ultimately on the basis of the conviction under Sec. 12 of the Act the petitioner was dismissed from service by order dated 20.4.88. In view of the provisions of Sec. 12 of the Act past service of the petitioner is not required to be taken into consideration while passing the order imposing the punishment. According to the respondents, the CRPF is an Arm Force wherein a strict discipline is required to be maintained and no lenient view can be taken against a person who has misconducted himself and indulged in gross indiscipline.

According to the respondents, the procedure prescribed in Rule 27 is applicable where departmental inquiry is to be held against the person for taking action for misconduct. In the instant case, the services of the petitioner were terminated due to his conviction and therefore the provisions of Rule 27 of the CRPF Rules

are not applicable and no inquiry is required to be held against the petitioner for issuing the order of dismissal. According to the respondents, the services of the petitioner were terminated only on the ground that he has been convicted for offences punishable under Section 10(m) and 10(n) of the Act and his past service record was not taken into consideration for imposing penalty of dismissal though it is referred to in the order of dismissal. According to the respondents, only one judicial trial was conducted and the petitioner was sentenced to undergo R.I. for 7 days by the learned Magistrate and the copy whereof was served on the petitioner on 18.4.88 itself. It is not true to say that the judicial trial was conducted in English language, though proceedings were recorded in English. The trial was conducted in Hindi language and everything was explained to the petitioner in Hindi language and the petitioner has pleaded guilty in the said case. The petitioner was given ample opportunity to cross-examine the witnesses but he did not cross-examine them according to his wisdom. The respondents denied that he was asked to plead guilty as alleged by him. If the petitioner was absent for good reason it was absolutely necessary for him to obtain permission/sanction from the competent authority which he has not taken and, therefore, the explanation given by the petitioner is an after thought and hence not tenable and accepted. Under the circumstances, the SCA deserves to be dismissed with cost.

I have perused the authorities cited by the advocate for the appellant and reply filed by the respondents. It is true that the CRPF is an Arm Force and strict discipline is required to be maintained. The explanation given by the appellant to remain absent on 4.4.88 and 11.4.88 on the ground that there was no kerosene in his house and he went to take the same and that he went to give message of demise of brother-in-law to his another brother-in-law appears to have been covered up at a later stage.

Section 10(c) of the Act is regarding "being in command of a guard, picquet or patrol, absents himself without leave or ..... shall be punished for life or a term not less than 7 days."

From the aforesaid section, it appears that the appellant was a guard and on flimsy ground of taking kerosene and conveying message to his brother-in-law, he remained absent on 2 occasions without prior permission of the higher authority. The said act cannot be condoned

by less heinous offences. As per sec. 10 of the said Act, it can be governed by minor punishments as per Sec. 11 of the Act. Sec. 12(1) of the Act says that any person sentenced under this Act to imprisonment may be dismissed from force and shall further be liable to forfeiture of pay, allowance etc. Under the circumstances, I am of the opinion that this court should not sit in appeal over the punishment ordered to the petitioner and interfere with the discipline as required in the Arm Force. So far as non-acceptance of the suspension order is concerned, the ground stated by the appellant is that he was not in proper mental condition and therefore he refused to accept the suspension order. This ground also does not appear to be sound. If the appellant was not keeping good health, he should have taken sick leave and should remained in the hospital. Later on, by not accepting the suspension order, he has committed grave misconduct. Therefore, I am of the opinion that this SCA is required to be rejected and the same is rejected with no order as to costs.

(SHARAD D DAVE, J)

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